

U^v
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

1978 SEP 18 PM 4-20

THE MAGNAVOX COMPANY, and
SANDERS ASSOCIATES, INC.,

Plaintiffs,

v.

APF ELECTRONICS, INC.,
et al.,

Defendants.

CLERK, U.S. DISTRICT COURT

Civil Action No.
77 C 3159

Unisonic's Responses to Plaintiffs'
Interrogatories to Defendants

Defendant, Unisonic Products Corp., subject to the provisions of the Federal Rules of Civil Procedure, hereby responds to plaintiffs' Interrogatories to Defendants as designated below.

These responses are made without waiver of, and with preservation of:

all questions as to the competency, relevancy, materiality, privilege and admissibility of the response and the subject matter thereof as evidence for any purpose in any further proceedings in this action, including the trial of this action, and in any other action;

the right to object to the use of any such response, or the subject matter thereof, on any ground in any further proceedings in this action, including the trial of this action, and in any other action;

the right to object on any ground at any time to a demand or request for further response to these or any other interrogatories or any other discovery proceedings involving or relating to the subject matter of the interrogatories herein responded to; and

the right at any time to revise, correct, add to, supplement or clarify any of the responses contained here.

The following responses (and any further responses to these interrogatories or their subject matter) are made expressly without acknowledgment of materiality or relevance of the interrogatories, or that the interrogatories are in any way reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORIES

2. Fully identify defendant's video games by responding to the following:

(a) State the model or type name or number of each video game made, used, or sold by defendant within the United States during the period April 25, 1972 through August 5, 1975 and the model or type name or number of each video game made, used, or sold by defendant within the United States since August 5, 1975.

(b) As to each model or type name or number video game stated in defendant's response to paragraph (a) of this interrogatory:

(i) state whether it is a coin-operated video game or a consumer video game;

(ii) describe the game or games played thereon as they appear to the player;

(iii) identify the document or documents containing a schematic electrical circuit diagram thereof;

(iv) identify the person or persons having the greatest knowledge of the electrical design and operation thereof;

(v) identify the manufacturer and/or supplier and the manufacturer's and/or supplier's part or model

number of any integrated circuit(s) included in such video game which integrated circuit(s) was specifically intended by its manufacturer to be used in and/or was sold for use in video games;

(vi) if any one or more units of that model or type of video game was not manufactured by defendant, identify the party who manufactured those video games not manufactured by defendant and the party from whom defendant acquired those video games.

(c) As to each model or type name or number video game stated in response to paragraph (a) of this interrogatory,

(i) state the number of units of that game made, used, or sold by defendant within the United States during the period August 25, 1972 through August 5, 1975 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game for sales made during the period August 25, 1972 through August 5, 1975;

(ii) state the number of units of that game made, used or sold by defendant within the United States since August 25, 1972 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game made since August 25, 1972;

(iii) state the number of units of that game made, used, or sold by defendant within the United States since August 5, 1975 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game made since August 5, 1975.

Response to Interrogatory No. 3

(a) The model or type numbers are:

T100	}	tennis, hockey, squash and practice
T101		
T102		
T200		
T1000		

T150	}	ping pong, tennis, hockey, rifle and practice
T2000		
T2501		

T2600 - tennis, soccer, squash, practice, basketball, target shooting, quick shoot, hops and hockey

T2711 - various games

(b) (i) consumer video game;

(ii) see (a);

(iii) when and if located such documents will be identified

(iv) Unisonic does not employ any engineers

familiar with electrical design and circuitry; Maurice Lowinger has as much knowledge of the electrical design and operation as any other employee of defendant Unisonic.

Interrogatory 2(b) (v) and (vi) and (c) are objected to on the grounds, inter alia, that they do not seek material or relevant information and are not reasonably calculated to lead to the discovery of admissible evidence and further that they seek trade secrets and/or confidential and proprietary information and/or commercial information of defendant Unisonic Products Corp.

3. Does defendant contend that the patent in suit is invalid, void, or unenforceable for any reason under 35 U.S.C. §§ 102 or 103? If so:

(a) State each and every reason, ground, or basis not otherwise stated in defendant's responses to paragraphs (b)-(i) of this interrogatory to support defendant's contention that the patent in suit is invalid, void, or unenforceable under 35 U.S.C. §§ 102 or 103.

(b) State each and every instance of knowledge or use by others in this country of the invention of the patent in suit and of patenting or description in a printed publication of the invention of the patent in suit in this or a foreign country before the invention thereof by the inventor named in the patent in suit which renders the patent in suit invalid, void, or unenforceable under 35 U.S.C. §102(a); state in detail each alleged act, fact, or occurrence known to defendant to support each such instance of knowledge or use by others; separately as to each alleged act, fact, or occurrence, identify all persons known to defendant who were witnesses to such alleged act, fact, or occurrence and all

documents known to defendant relating to the occurrence or nonoccurrence of such alleged act, fact, or occurrence; and identify each such patent or printed publication.

(c) State each and every instance of patenting or description in a printed publication in this or a foreign country or placing in public use or on sale in this country of the invention of the patent in suit more than one year prior to the date of the application for the patent in suit in the United States which renders the patent in suit invalid, void, or unenforceable under 35 U.S.C. § 102(b); identify each such patent or printed publication; state in detail each alleged act, fact, or occurrence known to defendant to support each such instance of placing in public use or on sale; and, separately as to each alleged act, fact, or occurrence, identify all persons known to defendant who were witnesses to such alleged act, fact, or occurrence and all documents known to defendant relating to the occurrence or nonoccurrence of such alleged act, fact, or occurrence.

(d) State each and every alleged act, fact, or occurrence known to defendant which supports the position that the inventor named in the patent in suit abandoned the invention thereof or which renders the patent in suit invalid, void, or unenforceable under 35 U.S.C. § 102(c) and, separately as to each alleged act, fact, or occurrence, identify all persons known to defendant who were witnesses to such alleged

act, fact, or occurrence and all documents known to defendant relating to the occurrence or nonoccurrence of such alleged act, fact, or occurrence.

(e) State each and every alleged act, fact, or occurrence known to defendant which supports the position that the patent in suit is invalid, void, or unenforceable under 35 U.S.C. § 102(d); identify each patent or inventor's certificate which relates to or supports such position, as to each such patent state in detail each and every reason, ground, or basis to support the position that the invention of the patent in suit was patented therein; and as to each such inventor's certificate state in detail each and every reason, ground or basis to support the position that the invention of the patent in suit was the subject thereof.

(f) State each and every instance of description of the invention of the patent in suit in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for the patent in suit which renders the patent in suit invalid, void, or unenforceable under 35 U.S.C. § 102(e) and identify each patent or application for patent known to defendant relating to each such instance.

(g) State each and every alleged act, fact, or occurrence known to defendant which supports the position that the inventor named in the patent in suit did not himself invent the subject matter sought to be patented or

patented therein or which renders the patent in suit invalid, void, or unenforceable under 35 U.S.C. § 101(f) and, separately as to each alleged act, fact, or occurrence, identify all persons known to defendant who were witnesses to such alleged act, fact, or occurrence and all documents known to defendant relating to the occurrence or nonoccurrence of such alleged act, fact, or occurrence.

(h) State each and every instance of making of the invention of the patent in suit before the invention thereof by the inventor named in the patent in suit by another who had not abandoned, suppressed, or concealed it which renders the patent in suit invalid, void, or unenforceable under 35 U.S.C. §102(g); state in detail each alleged act, fact, or occurrence known to defendant to support each such instance of prior invention and each alleged act, fact, or occurrence relating to the dates of conception and reduction to practice and reasonable diligence to reduce to practice in each such alleged instance; and, separately as to each alleged act, fact, occurrence, identify all persons known to defendant who were witnesses to such alleged act, fact, or occurrence and all documents known to defendant relating to the occurrence or nonoccurrence of such alleged act, fact, or occurrence.

(i) Identify each and every item, fact, act, or occurrence which defendant contends is a portion of the "prior art" with respect to the patent in suit as that term

is used in 35 U.S.C. § 103 and renders the patent in suit invalid, void, or unenforceable under 35 U.S.C.

§ 103; as to each such item, fact, act, or occurrence state which paragraph, if any, of 35 U.S.C. § 102 renders it a part of the "prior art" as that term is used in 35 U.S.C. § 103 and supply the information requested in the corresponding one(s) of paragraphs (b)-(h) of this interrogatory as to that item, fact, act, or occurrence; state what defendant contends is the art to which the subject matter sought to be patented or patented in the patent in suit pertains for the purposes of 35 U.S.C. § 103; state what defendant contends was the level of skill of a person having ordinary skill in the art to which the subject matter sought to be patented or patented in the patent in suit pertains at the time the invention of the patent in suit was made by the inventor named in the patent in suit and at the time the application for the patent in suit was filed; state what defendant contends was the difference(s) between the prior art and the subject matter sought to be patented or patented by the patent in suit; state each and every fact, act, occurrence, item, reason, or belief which defendant contends supports the position that the difference(s) between the subject matter sought to be patented or patented in the patent in suit as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains at the time the invention of the patent in suit was made by the inventor named in the patent in suit and at the time the application for the patent in suit was filed.

Response to Interrogatory No. 3

This interrogatory is objected to as premature. Unisonic Products Corp. has not yet filed a responsive pleading with respect to issues of patent validity, infringement or enforceability. Upon the filing of any such pleading, timely notice will be given as to the basis for any affirmative defenses raised.

4. Does defendant contend that the patent in suit is invalid, void, or unenforceable for any reason under 35 U.S.C. § 112? If so:

(a) If defendant contends that the specification of the patent in suit does not contain a written description of the invention thereof, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, state in detail each and every deficiency in the written description of the invention and each and every item or element which was omitted from the written description of the invention and state in detail every ground reason, or basis to support the position such deficiencies or omitted items or elements, taken singularly or in combination, would prevent any person skilled in the art to which the invention of the patent in suit pertains, or to which it is most nearly connected, from making and using the same.

(b) If defendant contends that the specification of the patent in suit does not set forth the best mode contemplated by the inventor named in the patent in suit of carrying out the invention of the patent in suit, identify each mode of carrying out the invention of the patent in suit which was contemplated by the inventor named in the patent in suit as better than the mode or modes set forth in the specification of the patent in suit.

(c) If defendant contends that the specification of the patent in suit fails to conclude with one or more claims particularly pointing out or distinctly claiming the subject matter which the inventor named in the patent in suit regarded as his invention, state in detail each and every ground, reason or basis to support the position the claims of the patent in suit fail to particularly point out or distinctly claim the subject matter which the inventor regarded as his invention.

Response to Interrogatory No. 4

See response to Interrogatory 3.

5. Does defendant contend that the patent in suit is invalid, void, or unenforceable for any reason under 35 U.S.C. §§ 251 or 252? If so, state in detail each and every reason, ground, or basis to support defendant's contention that the patent in suit is invalid, void, or unenforceable under 35 U.S.C. §§ 251 or 252; state in detail each alleged act, fact, or occurrence known to defendant which supports each such reason, ground, or basis; and, separately as to each act, fact, or occurrence, identify all persons known to defendant who were witnesses to such alleged act, fact, or occurrence and all documents known to defendant relating to the occurrence or nonoccurrence of such alleged act, fact, or occurrence.

Response to Interrogatory No. 5

See response to Interrogatory 3.

6. Does defendant contend that the patent in suit is invalid, void, or unenforceable or was unenforceable at any time while defendant was making, using or selling video games for any reason other than those stated in defendant's responses to interrogatories 2 through 5? If so, state in detail each and every other reason, ground, or basis to support defendant's other contentions that the patent in suit is or was invalid, void, or unenforceable; state in detail each alleged act, fact, or occurrence known to defendant which supports each such reason, ground, or basis; and, separately as to each alleged act, fact, or occurrence, identify all persons known to defendant who were witnesses to such alleged act, fact, or occurrence and all documents known to defendant relating to the occurrence or nonoccurrence of such alleged act, fact, or occurrence.

Response to Interrogatory No. 6

See response to Interrogatory 3.

7. (a) Does defendant contend that any of the video game models or types identified in the response to paragraph (a) of interrogatory 2 does not come within the terms of one or more claims of the patent in suit? If so, as to each and every video game model or type identified in defendant's response to interrogatory 2 which defendant contends does not come within the terms of one or more claims of the patent in suit, state in detail each and every reason, ground, or basis to support defendant's contention

that that video game model or type does not come within the terms of each of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, 60, 61, 62, 63, and 64 of the patent in suit.

(b) Does defendant contend that plaintiffs are estopped from asserting that any one of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, 60, 61, 62, 63, or 64 is infringed by the manufacture, use and/or sale by defendant of any one or more of the video game models or types identified in defendant's response to interrogatory 2? If so, as to each such claim and as to each video game as to which defendant contends plaintiffs are estopped, specifically identify each limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item which defendant alleges resulted in said estoppel; state with specific reference to paper, page number, and line number, if any, in the file history of the application or applications for the patent in suit where said limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item occurred; and state every reason, basis, or ground upon which defendant alleges each such limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item resulted in such estoppel.

Response to Interrogatory No. 7

See response to Interrogatory 3.

8. What does defendant contend is "a reasonable royalty" as that term is used in 35 U.S.C. § 284 for the use of the invention of the patent in suit by defendant if the Court should find that defendant has infringed the patent in suit? State each and every act, fact, occurrence, reason, ground, or basis which defendant will rely upon to support such contention.

Response to Interrogatory No. 8

This Interrogatory is objected to as requesting a legal conclusion. Without waiver of this objection, however, it is apparent that a "reasonable royalty" would be some percentage of net sales which is less than 4.25% on the grounds that a judgment on damages was entered in favor of plaintiffs and against Chicago Dynamic Industries at such a percentage with regard to a group of patents including the patent in suit.

9. (a) Identify each person whom defendant expects to call as an expert witness at the trial in this civil action.

(b) As to each expert witness identified in defendant's response to paragraph (a) of this interrogatory, state the subject matter or subjects matter on which he is expected to testify.

(c) As to each expert witness identified in defendant's response to paragraph (a) of this interrogatory, state the substance of the facts and opinions as to which the expert is expected to testify.

(d) As to each expert witness identified in defendant's response to paragraph (a) of this interrogatory, summarize the grounds for each opinion set forth in defendant's response to paragraph (c) of this interrogatory; and

(e) Identify each person whom defendant has retained or specially employed in anticipation of this civil action and/or in preparation for trial in this civil action.

Response to Interrogatory No. 9

Unisonic Products Corp. has not yet identified any expert witnesses that it expects to call at trial of this action. In response to part (e) of this Interrogatory, plaintiff: are advised that no such physician has been retained or employed and beyond such advice, part (e) is objected to as beyond the scope of the Federal Rules of Civil Procedure.

10. Has defendant given or received any indemnity agreements relating to or including claims or charges of patent infringement of the patent in suit? If so, and separately as to each such indemnity agreement, identify the parties other than defendant to that agreement; state the date such indemnity agreement was entered into and the dates, if any, such indemnity agreement was terminated or modified; state the full and complete terms of such indemnity agreement and any modifications thereto.

Response to Interrogatory No. 10

No.

11. With respect to plaintiffs acquisition of knowledge of the patents in suit:

(a) State the date when defendant first gained knowledge or was advised or received notice of that patent or of the application which resulted in that patent;

(b) State the date when defendant first gained knowledge or was advised or received notice that plaintiffs individually or collectively were asserting any exclusive or patent rights in the industry or trade related to video games;

(c) State in detail the manner in which defendant gained or received the knowledge, advice or notice specified in paragraphs (a) and (b) of this interrogatory and identify the person or persons, firm or firms, corporation or corporations and the like from whom such knowledge, advice or notice was gained or received;

(d) Identify all documents relating to the knowledge, advice and notice referred to in paragraphs (a) through (c) hereof;

(e) State whether defendant or an officer, director, or managing agent of defendant has ever formed an opinion as to whether the claims of the patent in suit were valid and/or enforceable against defendant and/or whether the manufacture, use, and/or sale by defendant of any of the video game models or types identified in defendant's response to paragraph (a) of interrogatory 2 hereof constituted infringement of said patent;

(f) If defendant's response to paragraph (e) of this interrogatory is in the affirmative, state the date or dates upon which defendant or any of its officers, directors, or managing agents arrived at each such opinion or opinions as to whether the claims of the patent in suit were valid and/or enforceable against defendant and/or whether the manufacture, use, and/or sale by defendant of any of the video game models or types identified in defendant's response to paragraph (a) of interrogatory 2 hereof constituted an infringement of said patent; state each such opinion or opinions; identify each officer, director, managing agent, or other personnel of defendant who formed and held that opinion or opinions; identify every document containing or reporting that opinion or opinions; and identify each and every alleged fact, act, or occurrence and each and every document considered in arriving at that opinion or opinions.

Response to Interrogatory No. 11

(a) October 3, 1977 when the summons and complaint were served upon defendant Unisonic Products Corp.;

(b) at some unassertainable time prior to receipt of the summons and complaint in this action, Unisonic Products Corp. became aware of some vague rumors in the trade that plaintiffs were asserting some undefined rights relating to video games but Unisonic Products Corp. was not aware of what rights plaintiffs were asserting or that they had any relevance whatsoever to Unisonic;

(c) see responses to (a) and (b);

(d) the summons and complaint herein;

(e)(f) objected to on the grounds, inter alia, that these interrogatories are beyond the scope of the Federal Rules of Civil Procedure, do not seek relevant or material information and are not reasonably calculated to lead to the discovery of admissible evidence and further that these interrogatories seek privileged information.

12. With respect to any ownership interest in or license of defendant under any patents relating to the patent in suit:

(a) Identify each and every patent or patent application of the United States or any other country owned in whole or in part by defendant or which resulted from or-- covers development work done by or on behalf of or for defendant and which discloses or claims video games or subject matter related to or useful with video games or which defendant claims discloses or claims subject matter used in any one or more of defendant's video games identified in defendant's response to paragraph (a) of interrogatory 2 hereof.

(b) Identify each and every patent or patent application of the United States or any other country which discloses or claims video games or subject matter related to or useful with video games or used in any one or more of defendant's video games identified in defendant's response to paragraph (a) of interrogatory 2 hereof under which defendant is or ever has been licensed and as to each such patent or patent application, identify the party that granted defendant a license thereunder, state the date upon which defendant's license thereunder became effective, state the date (if any) upon which defendant's license thereunder terminated, state whether defendant's license thereunder was

expressed or implied and in oral or written form, and state the full terms of such license.

Response to Interrogatory No. 12

See response to Interrogatory 3.

Dated: September 13, 1978


Maurice Lowinger

State of New York :
 : ss
County of New York :

On the 13th day of September, 1978, before me appeared Maurice Lowinger, known to me to be the President of Unisonic Products Corp. and who executed the foregoing response, and he acknowledged to me that he executed the same.


Notary Public

EDWARD A. MEILMAN
Notary Public, State of New York
No. 44-7886290
Qualified in Rockland County 80
Commission Expires March 30, 19.....